CF0000061721

(2) CeA 1067/97

Division Bench (Criminal)

APPEAL PRISONER

S. T. No. 228/89

638 Name तामी भीमा

Father's Name कोसा Resident ग्राम- खचेली
थाना-किरन्दुल, बस्तर

Age 32 वर्ष Sentenced to आजीवन कारावास on 28/1/97

Under Section 302 I.P.C. by सत्र न्यायाधीश जगदलपुर, बस्तर

It is explained to the prisoner that if he states or wishes to be represented by a legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears If the legal practitioner does not appear within seven days he may be heard at all if legal practitioner the court may proceed at once with the case and will not be obliged to give a bearing to any legal practitioner who should appear.

1. Date of application for copy of Judgement :- No.
2. Date of which copy received :- 28.1.97
3. Date on which appeal sent :- 5.2.97
4. Whether the prisoner wished to be represented or not :- Yes / ~~No.~~

No. 638 Name तामी भीमा पो० कोसा

Continued in जिला Jail प्रथम श्रेणी जगदलपुर

No. /अपील/ Dated 5/2/97

Forwarded to the CHIEF JUDICIAL MAGISTRATE जगदलपुर (बस्तर)

together with a copy of Judgement or order passed in the case for favour of transmission to the proper Applleate Court.

अधीक्षक
जिला जेल प्रथम श्रेणी
जगदलपुर

Superintendent-Central / Distt. / Sub-Jail.

Date of receipt in C. J. M. Office.

Date of receipt of record to accompany.

Memo of Appeal of the Appellate Court.

No. 71 dated 19.2.97

Forwarded to the मान्यवर कोर्ट सेशन थाना पो/टा भोपाल जगदलपुर

(डी.के. तिवारी)
मुख्य न्यायिक दण्डाधिकारी
जगदलपुर

C. R. MAGISTRATE

Date of receipt in Applieate Court

(23)

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आदेश पत्रक

मामला क्रमांक CrA 1067/97 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: HON'BLE SHRI L.C.BHADOO & HON'BLE SHRI DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO. 1067 of 1997

Appellant : Tatee Bhema

Vs.

Respondent : State of Madhya Pradesh

Shri R.K.Jain, learned counsel for the appellant.

Shri M.P.S. Bhatia learned P.L. for the respondent/State.

ORAL JUDGMENT

(21.02.2006)

Dhirendra Mishra, J

The appellant has preferred this appeal against the judgment dated 28.01.1997 passed by the learned Sessions Judge, Bastar at Jagdalpur in S.T.No. 228/89 by which the learned Sessions Judge after holding the accused/appellant guilty under Section 302 of the Indian Penal Code for causing homicidal death of Tati Budra sentenced him to undergo imprisonment for life.

2. Case of the prosecution is that on 20.04.1989 at about 4.00 p.m. on the basis of information given by Tati Ganga (PW-4) that in the intervening night of 19/20.04.1989 appellant shot an arrow at the back of deceased Tati Budra as a result of which he died, the offence under Section 302 of the IPC was registered against the accused/appellant. On the same day

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	merg intimation P-9 was registered in police station Kirandul, Bastar, on the basis of information given by Tati Ganga and thereafter First Information Report P-10 was registered for the offence under Section 302 of the IPC. After registering the case investigating officer proceeded to the place of occurrence. Investigating officer conducted inquest after giving due notice to the witnesses and submitted the report P-5. Dead body of Tati Budra was sent for post mortem examination vide P-1 to Govt. Hospital, Kirandul, Bastar. Dr. A.K.Singh (PW-7) conducted post mortem examination on the body of the deceased and submitted the report P-13. In his report the doctor has opined that cause of death of Tati Budra was shock and comma due to hypo volumia and extensive pain caused by arrow injury. He further opined that the death was homicidal in nature. Bloodstained clothing of the deceased and arrow causing injury were seized under P-2. Bloodstained soil and plain soil was seized under P-6. Memorandum of the accused P-7 was recorded and on the basis of the information given by the accused bow by which the arrow was shot by the accused as well as an arrow were seized under P-8. Clothing of the deceased and arrow so seized were sent for chemical examination to the Forensic Science Laboratory. After completing the investigation charge sheet was filed in the Court of Judicial Magistrate First Class, Dantewada who in turn committed the case to the Court of Sessions Judge, Bastar at Jagdalpur. Learned Sessions Judge framed charge under Section 302 of the IPC against the accused/appellant. Accused/appellant abjured the guilt.	

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3. Prosecution in order to establish its case examined in all seven witnesses. Statement of the accused/appellant was also recorded under Section 313 of the Code of Criminal Procedure in which the appellant denied the circumstances appearing against him in the prosecution case and pleaded his innocence and false implication in the case.

4. Homicidal death of Tati Budra is not in dispute. Even otherwise form the statement of Dr. A.K.Singh (PW-7) who has stated that deceased died because of shock and comma occurred due to hypo volumia and extensive pain caused due to arrow injury and the dead (death) was homicidal in nature and further from the perusal of statement of PW-3 Tati Bhema who has stated that the appellant shot an arrow at the deceased on his back, the homicidal nature of death is established.

5. The second question to be considered by this Court is whether the prosecution has been able to establish involvement of the accused/appellant in the aforesaid offence? To establish the involvement of the accused/appellant in the crime in question the prosecution has examined Tati Bhema (PW-3) who had witnessed the incident. Tati Bhema in his statement has stated that on the date of incident he was returning in the night with the deceased Tati Budra after grazing cattle and when they reached near the house of accused/appellant, the appellant came out of his house carrying his bow and shot an arrow with it on the back of the deceased as a result of which he fell down on the ground and then accused/appellant fled away from the place of occurrence. Thereafter, he narrated the incident to his father Tati Ganga PW-4 who

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	came to the spot and called other persons of the village. However, Tati Budra died on the spot. In the cross examination he has stated that in fact they had gone to search some missing cattle in the forest and when they were returning together, deceased was going ahead of him and he was behind him and when they reached near the house of the appellant, the deceased received an arrow injury on his back and when he turned backward, he saw the appellant running away carrying bow and arrow with him. He, however, denied the suggestion that he did not see the accused shooting arrow. Statement of this witness is duly corroborated by the evidence of his father Tati Ganga PW-4 who has stated that his son Tati Bhema came and informed him that accused had assaulted Tati Budra by arrow on his back and on his information he went to the spot and found Tati Budra in injured condition. He also informed the incident to Tati Kosa and Tati Joga, the Sarpanch of the village. However, when they reached the spot they found that Tati Budra had died. Statement of PW-3 Tati Bhema is further corroborated by the evidence of Muiyaram PW-5 and Dr. A.K. Singh PW-7. PW-7 Dr. Singh has stated in his evidence that on examination of the dead body he found one arrow injury on the right side of vertebral bone admeasuring 1x1/2" in size and he found that the other injury in the size of 3.5 x 5' was on the horizontal point. Thus from the statements of PW-3, PW-5 and PW-7 it is established that the injuries present over the person of the deceased were in fact caused by the accused and the defence has not been able to elicit anything which makes the evidence of these witnesses unreliable or untrustworthy.	

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6. Learned counsel for the accused/appellant submits that the appellant and the deceased are the real brothers. There is no evidence on record to show that they had any animosity with each other. Injury was caused on the non vital part i.e. back of the deceased and as such the offence against the accused does not travel beyond section 304-II of the IPC as there was no motive to cause the death on the part of the accused/appellant and that there was no enmity between the appellant and the deceased.

7. On the other hand learned counsel for the respondent/State submits that on internal examination the doctor has found piercing wound over the right lung and the left lung had collapsed and in view of the above injuries there is no illegality in the impugned judgment of the trial Court which requires any interference from this Court.

8. We have heard learned counsel for the parties and perused the evidence on record.

9. It is not in dispute that the accused and the deceased were real brothers. It is also not disputed that from the evidence on record it is not established that there was any animosity between the appellant and deceased or that the appellant had any motive to cause the death of his own brother as PW-3 Tati Bhema in paragraph No.5 of his deposition has stated that there was no quarrel between the appellant and the deceased before the incident as per his knowledge. The other witnesses have also not stated that there was any dispute between the accused/appellant and

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the deceased before the incident. PW-7 Dr. Singh has also stated in paragraph No.6 of his cross examination that if the patient was given immediate medical treatment, he could be saved.

10. Thus considering the overall evidence on record and the fact that only one arrow injury that too on the back of the deceased was caused, we are of the opinion that the intention to cause death of the deceased cannot be attributed to the appellant though form the medical evidence it is established that the appellant had the knowledge that the injury which he was causing with the arrow could cause death of the deceased.

11. In the result, appeal partly succeeds. Conviction under section 302 of the IPC and resultant sentence of imprisonment for life imposed on the appellant are set aside. The appellant is convicted under section 304-II of the IPC and sentenced to undergo RI for 10 years. It is stated that the appellant is in detention since 11 years and 7 months which is not disputed by the counsel for the respondent /State and thus he has already undergone the sentence imposed on him. Accordingly, the accused/appellant be set at liberty forthwith if not required in any other case.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge

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